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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT NEW YORK

THE BANK OF NEW YORK TRUST  
COMPANY, N.A., as Trustee,

Plaintiff,

- against -

FIRST MAGNUS CAPITAL, INC. and THOMAS  
W. SULLIVAN, SR. as Trustee of the THOMAS  
W. SULLIVAN SR. REVOCABLE TRUST,

Defendants.

07 Civ. 8255 (PKC)

**STIPULATION AND ORDER**

Plaintiff The Bank of New York Trust Company, N.A., as Trustee and First Magnus Capital, Inc. ("FMC"), by their undersigned counsel, hereby stipulate and agree to the following:

1. FMC agrees to produce the non-privileged documents responsive to Plaintiff's First Request for Production of Documents on or before October 12, 2007 by delivery to the offices of plaintiff's counsel.
2. FMC agrees to produce its Chief Financial Officer, Gary Malis, for a deposition at the offices of FMC's counsel on or before October 19, 2007.
3. FMC acknowledges service of the summons and complaint, and the Order to Show Cause dated October 2, 2007 together with the papers on which it was based, and will not object to the personal and subject matter jurisdiction or the venue of this Court.
4. Pending further order of the Court, without the prior written consent of plaintiff, FMC is hereby restrained and enjoined from making any payment, or transferring, assigning or giving anything of value of any kind, to or on behalf of (a) Sullivan, (b) any other FMC

shareholder, officer or director, or (c) any unsecured creditor other than plaintiff except in the ordinary course of business.

5. Pending further order of the Court, without the prior written consent of plaintiff, FMC is hereby restrained and enjoined from leasing, licensing, mortgaging, hypothecating, liening, or otherwise encumbering, any asset of FMC or any interest FMC has in any real or personal property.

WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

By: Kath Roberts AB  
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Attorneys for Plaintiff

October \_\_, 2007

SNELL & WILMER L.L.P.

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One Arizona Center  
Phoenix, AZ 85004-2202  
Attorneys for Defendant FMC

October 5, 2007

SO ORDERED:

Date:

P. Kevin Castel  
P. KEVIN CASTEL  
United States District Judge

10-5-07  
4:25 PM